

June 19, 2009

**VIA ELECTRONIC FILING**

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

**Re: CC Docket No. 96-45  
NOTICE OF EX PARTE PRESENTATION**

Dear Ms. Dortch:

On June 19, 2009, F.J. Pollak, President and Chief Executive Officer, TracFone Wireless, Inc., Harmony Knutson, Vice President, Navigators Global, LLC, and I met with Acting Chairman Michael J. Copps and his legal advisor, Jennifer Schneider. During the meeting, we briefed Acting Chairman Copps and Ms. Schneider on TracFone's SafeLink Wireless Lifeline service and discussed several issues before the Commission relevant to TracFone's offering of Lifeline service as an Eligible Telecommunications Carrier (ETC). Specific topics addressed included the following:

- TracFone's proposal to modify Section 54.403 of the Commission's rules to increase the permissible amount of Lifeline support which may be received by ETCs offering Lifeline service, without regard to the subscriber line charge imposed by incumbent local exchange carriers serving the same areas. That proposal is contained in a petition for rulemaking and in a petition for waiver, both of which are pending;
- TracFone's petition to modify the annual verification condition contained in the Commission's order conditionally granting TracFone's petition for forbearance so as to require that TracFone annually verify that each of its Lifeline customers remain head of household and only receive Lifeline-supported service from TracFone. TracFone has requested that this requirement be modified to allow the verification to be based on a statistically-valid sample of customers. The requested modification of condition would result in that TracFone-only verification condition being consistent with the annual verification of eligibility requirement applicable to TracFone and all other ETCs;
- The pending petitions to reject TracFone's certification of compliance with state 911 laws filed by groups from Alabama and Pennsylvania. TracFone noted that those petitions involve questions of interpretation of state laws which should be adjudicated by state tribunals of competent jurisdiction, not by the FCC;
- Whether customers of prepaid wireless Lifeline service should be subject to 911 fees since the customers are not required to pay for their wireless service and there is no means to collect such fees from those customers;

- TracFone proposed that the condition allowing it to offer Lifeline service only where 911 and E911 are available should be waived so as to allow it to offer Lifeline service in rural areas where E911 has not yet been deployed by public safety departments. In such locations, a customer having a wireless phone with access to 911, but not E911, has greater access to public safety services than does someone without a wireless phone.

A handout summarizing these points was provided. A copy of that presentation handout is enclosed herewith. Pursuant to Section 1.1206(b) of the Commission's rules, this notice is being filed electronically in the above-captioned docket. If you have questions regarding this letter, please communicate directly with undersigned counsel for TracFone.

Sincerely,



Mitchell F. Brecher

Enclosure

cc: Hon. Michael J. Copps  
Ms. Jennifer Schneider  
Mr. F.J. Pollak  
Ms. Harmony Knutson

**TracFone Wireless, Inc.**

**Presentation to Acting Chairman  
Michael J. Coppins**

**June 19, 2009**

# MAXIMIZE AVAILABLE LIFELINE SUPPORT AND BENEFIT

- FCC rules (54.403) limit Lifeline support available to ETCs based, in part, on ILEC Subscriber Line Charges (SLCs) (capped at \$6.50).
- Where an ILEC SLC is \$6.50, ETC can get up to \$10 (\$6.50 + 1.75 + 1.75) if the ETC provides a Lifeline benefit of at least \$13.50; where the ILEC's SLC is below \$6.50; Lifeline support is reduced by that amount.
- ILEC SLCs are not relevant to Lifeline benefits of wireless ETCs.
- TracFone wants to provide a full \$13.50 Lifeline benefit -- 68 minutes per month -- everywhere, so it has done the following:
  - Petitioned for rulemaking to revise 54.403 to allow for the full (Tier One) support without regard to the ILECs' SLC; and
  - Petitioned for waiver of the rule so that the Commission can allow TracFone to provide the full 68 minute per month benefit while the rulemaking process is ongoing.
- Both petitions are pending.
- If the FCC allows TracFone (and other ETCs) to receive the full \$6.50 in Tier One support without regard to ILEC SLC levels, it will offer the full 68 minute benefit wherever SafeLink Wireless service is available.

## MODIFY ANNUAL VERIFICATION CONDITION

- All ETCs are required to verify annually their Lifeline customers' continued eligibility for Lifeline based on a statistically-valid sample of their Lifeline customers (Sec. 54.410(c)(2) of FCC rules);
- TracFone is also subject to a special condition that it verify annually that each of its Lifeline customers are i) head of household, and ii) only receive Lifeline-supported service from TracFone (TracFone Forbearance Order, Sept. 2005).
- In April 2009, TracFone petitioned to modify its annual verification condition to make it consistent with the annual verification rule applicable to all ETCs, *i.e.*, that TracFone should be allowed to verify that its customers remain head of household and only receive Lifeline-supported service from TracFone, based on a statistically-valid sample of its customers, as TracFone and all other ETCs verify continued Lifeline eligibility.
- By making the annual verification requirements consistent, the Commission would “level the playing field” and avoid subjecting singled out providers such as TracFone to a burdensome requirement to contact all of their thousands of customers.
- Comments on this proposal are due July 6.

# **COMPLIANCE WITH STATE 911 LAWS; PETITIONS TO REJECT CERTIFICATIONS OF COMPLIANCE AND TO REVOKE ETC DESIGNATION**

- In the April 2008 order designating TracFone as an ETC in 10 states and the District of Columbia, the Commission required TracFone to certify that it is in compliance with state laws governing 911, including laws regarding funding of 911 service.
- TracFone has filed certifications that it is in compliance with state 911 laws for all states where it has been designated as an ETC by the FCC.
- Groups in two states -- Pennsylvania and Alabama -- have petitioned the FCC to “reject” TracFone’s 911 state law compliance certifications and to revoke its ETC designations.
- These petitions result from disputes which have arisen as to the language of state laws governing 911 fee collections and payments. Such questions of state law should be addressed and resolved by state tribunals with jurisdiction over such matters -- not by the FCC.
- In PA, the matter is before a state circuit court.
- In AL, no enforcement action has been initiated by any state agency or department.
- The FCC should dismiss these petitions, and should not allow its resources to be used to address questions of state law.
- The growing number of disputes as to whether and how 911 fees should be collected from customers of prepaid wireless services cries out for a comprehensive, nationally uniform solution.
- TracFone encourages the FCC to conduct a holistic inquiry into state 911 fee requirements and how those requirements should be applied to prepaid wireless services -- services where there is often no direct financial transaction between provider and customer, and where there is no billing mechanism to collect 911 fees.

# **WHETHER 911 FEES SHOULD BE APPLICABLE TO PREPAID LIFELINE SERVICE**

- Many states have laws which require wireless carriers to collect monthly 911 fees from their customers and to remit the collected fees to state 911 funds.
- Typically, these fees are collected through billed surcharges on customer invoices.
- With TracFone's Safelink Wireless Lifeline service, there are no bills and no charges; the service is provided to customers at no charge; with the costs covered by the universal service fund.
  - The charges are "paid" by USAC, not by customers.
- Since these services are provided at no charge to the customer, who should have to pay 911 fees?
  - The (non-paying) customer?
  - USAC?
  - TracFone?
- A better solution: Do not assess 911 fees on Lifeline services which are provided at no charge to the service recipient.
- Similar to the Universal Service Fund – Lifeline customers are not subject to Subscriber Line Charges and therefore no USF-assessable revenue is derived from SLCs from Lifeline customers.

# **THE E911 ACCESS CONDITION SHOULD BE REPEALED OR AT LEAST WAIVED IN CERTAIN CIRCUMSTANCES**

- Under the FCC's TracFone Forbearance Order, TracFone may only provide Lifeline service in areas where 911 and E911 service is available.
- With E911 being widely deployed, this condition has not been problematic, with few exceptions.
- There are still some locations (mostly rural and remote) where 911 service is available, but not E911. TracFone may not offer Lifeline service in those locations, although other ETCS may do so.
- Recently, for example, TracFone has received requests for Safelink Wireless Lifeline service from low income residents of Tazewell County and Leeds County, Virginia. TracFone cannot serve those customers since those counties have not yet deployed E911. Yet customers in those counties want – and need – wireless Lifeline service.
- While E911 is superior to basic 911 service in that the emergency service provider receives location information, 911 at least enables callers to access emergency service providers and to report emergencies. That is far better for public safety than to have no access to 911 or E911 in situations where a person does not have a phone.
- Also, many emergency situations occur away from home. With a cell phone, a caller can reach an emergency call center; without a cell phone he/she cannot.